

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

ZIEGLER, INC.

Employer/Petitioner

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 49

Union

Case 18-UC-336

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, careful investigation and consideration took place.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in connection with this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹
2. The Employer, contrary to the Union, seeks to clarify the existing bargaining unit by specifically excluding persons in outstate facilities who are engaged in a combination of functions related to its warehousing and parts supply operations.

¹ The Employer, Ziegler, Inc., is a Minnesota corporation with an office and place of business in Minneapolis, Minnesota, where it is engaged in the sale and service of heavy construction equipment. During the past 12 months, a representative period, the Employer purchased and received at its Minnesota facilities goods and materials valued in excess of \$50,000 directly from sources located outside the State of Minnesota, and earned gross revenues in excess of \$1,000,000.

The Employer sells and maintains new and used heavy construction equipment, primarily Caterpillar brand. It operates a number of facilities throughout the State of Minnesota. Its Minneapolis facility (actually in Bloomington, a close suburb) includes its administrative headquarters, and it is the largest facility. The Employer employs 130 mechanics there, represented by the Union. It also employs 20 warehouse employees represented by Teamsters Local 120. These employees are responsible for pulling parts, stocking shelves, and shipping.

The Employer also employs a separate, unrepresented department it calls parts employees who are primarily responsible for contacting customers and suppliers regarding parts and supplies. Parts employees wear a shirt and tie and rarely visit the warehouse. They work in an office-like atmosphere at a desk, variously referred to as the “city desk.” Relative to the city desk, at least, the warehouse is dark, dirty, cold in the winter, and hot in the summer.

The Employer also operates eight other facilities outside of Minneapolis. Teamsters Local 120 represents no one outside of Bloomington. Outstate, the Union represents mechanics and “branch warehousemen.” The Employer and the Union are parties to a single contract that covers all nine of its facilities statewide. The branch warehouse classification has been in their contracts for over 50 years.

The second largest Employer facility is a used equipment dealership in Shakopee. The next largest is in Buhl (at some point not determined in this record, this facility relocated from Hibbing). At both Buhl and Shakopee, the Employer has separate departments of parts and warehouse, as in Bloomington, and the Employer applies the terms of its contract with the Union to the warehouse employees.

The Employer operates six other dealerships around the state, in Rochester, St. Cloud, Fergus Falls, Marshall, Crookston, and Duluth. The Employer maintains that at those six facilities it has never distinguished parts employees from warehouse employees, has employed

only one or two people in the combined classification covering both “warehouse” and “city desk” functions, and has never recognized the Union as the representative of this classification, which it calls “parts persons” or “parts and warehouse persons.”

Using the Employer’s job titles, St. Cloud currently employs five parts and warehouse persons and one parts and warehouse supervisor. Fergus Falls currently employs one parts and warehouse person and one parts and warehouse supervisor. Marshall employs one parts person, one parts and warehouse person, and one parts and warehouse supervisor. Crookston has one parts person and one parts and warehouse person. Duluth has one parts and warehouse supervisor and one parts and warehouse person. Rochester has one parts and warehouse supervisor, one parts and warehouse person, and one “warehouse person - part time.”

The Union contends that it has always believed it represented the “parts and warehouse persons” as branch warehouse persons. It only “discovered” a problem when preparing for its most recent negotiations with Ziegler in the summer of 1998. At meetings with employees to consider contract proposals, some mechanic employees in St. Cloud complained that the warehouse employees weren’t being required to join the Union under their union security clause.

Jack Schouveller, the Union’s recording/correspondence secretary and chief negotiator with the Employer until he retired in January 1999, testified in an affidavit that he asked in a negotiating session in about July 1998 what the problem was with the St. Cloud warehouse people not joining the Union. He testified further that he was told by Barb Vermeer, the Employer’s director of human resources, that it wasn’t a problem, those people were covered. Vermeer testified, on the other hand, that she answered that the Union should know that those people have never been covered because of their combined functions.

In the 1950’s and ‘60’s, the Employer employed a number of people in Hibbing, Crookston and Duluth that it called “branch warehousemen,” and apparently considered them

part of the bargaining unit under that title. It is not clear when the Employer started using the parts or parts and warehouse titles. In August 1987, the Union requested the discharge of two branch warehousemen in Crookston, McWaters and Grinde, for noncompliance with the union security clause of the contract. The parties reached an agreement under which the Union “agreed that McWaters will be left alone and they’ll give a union card to Grinde.” In April 1993, the Union requested the discharge of three employees for noncompliance with the union security clause, Jeremiason in Marshall and West and Fruth in St. Cloud. The Employer answered in a May 7, 1993 letter:

All three of these employees, in addition to pulling parts, also deliver parts by pick-up truck, answer phone orders for parts, work at the counter with customers, research parts specification information and generally perform duties of a parts warehouseman and parts department manager. In the past, it has been your position that these additional duties put them beyond a unionized position.

We feel it is inappropriate for these gentlemen to be under the Union’s jurisdiction due to the amount of managerial duties they perform.

The Union thereafter acquiesced in those individuals’ exclusion from the unit.

The parties signed a contract on September 29, 1998, with a stated term of August 1, 1998 through July 31, 2001. It includes the same branch warehouse classification as in previous contracts, and does nothing further to resolve the dispute over which outstate parts and warehouse employees might be covered. The Union filed a grievance on November 3, 1998, protesting the Employer’s failure and refusal to apply the terms of the contract to branch warehouse employees in Marshall, St. Cloud, and Fergus Falls. In May 1999, the Union amended the grievance to add Crookston, Duluth, and Rochester to the grievance.

It appears that whether certain employees who perform warehouse and/or “city desk” functions should be covered by the parties’ collective-bargaining agreement will turn on an

interpretation of the contracts, an assessment of whatever agreements were reached during discussions of employees' placement in prior years such as the 1987 and 1993 situations discussed above, and other aspects of the parties' past practice and bargaining history. Statutory policy and community-of-interest factors seem unlikely to play any more than a tangential role. Accordingly, I conclude it is most appropriate to defer resolution of this case to the parties' pending grievance. McDonnell Douglas Corp., 324 NLRB 1202, 1205 (1997); St. Mary's Medical Center, 322 NLRB 954 (1997).

ORDER²

IT IS HEREBY ORDERED that this case shall be held in abeyance pending final resolution of the parties' pending grievance over coverage of branch warehouse employees. Jurisdiction of this proceeding is retained for the limited purpose of entertaining an appropriate and timely motion for further consideration on the proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of this Decision and Order, been either resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration; or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result that is repugnant to the Act, including, if applicable a result that is repugnant to Board law in representational matters.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **September 9, 1999**.

Dated at Minneapolis, Minnesota, this 26th day of August, 1999.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
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